

# **APPENDIX L**



November 24, 2020

S [REDACTED] H B [REDACTED]  
[REDACTED]  
AUSTIN, TX 78704

Dear Mr. B [REDACTED]:

As the Plan Administrator of the IBM Medical and Dental Plan for Regular Full-time and Regular Part-time Employees (the "Plan"), I conducted a final review of your appeal on behalf of your son, K [REDACTED] B [REDACTED], of Aetna's denial of payment for services as described below. The claims were made under the IBM PPO with H.S.A. (the "PPO"), component of the Plan.

**Claim Details:**

Name: K [REDACTED] B [REDACTED]	ID Number: [REDACTED]
Claim Number: N/A	Dates of Claim: March 14, 2019 through November 21, 2019

Amount Charged	Allowed Amount	Other Insurance	Deductible	Copay	Coinsurance	Other Amounts Not Covered	Amount Paid
\$11,565	N/A	N/A	N/A	N/A	N/A	N/A	N/A

YTD Credit toward Deductible: N/A	YTD Credit toward Out-of-Pocket Maximum: N/A
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**Note:** Diagnosis and treatment codes (and their meanings) associated with your claim will be provided upon request.

**Background Information:** Your recent appeal letter was received on October 26, 2020 requesting the above claims be processed and paid at the in-network rate as you feel IBM is violating the Federal Mental Health Parity Law with the plan exclusion of ABA therapy. In the appeal you also stated the \$50,000 maximum benefit under the Special Care for Children Assistance Plan (SCCAP) was violating federal law.

**Final Determination:** Regrettably, I must deny your claim for benefits under the Plan.

**Findings:** The information you have submitted has been thoroughly reviewed. During the review of your appeal, it was determined that the claims submitted for ABA therapy provided by Little Behavior Consulting, LLC. were processed correctly. IBM does not provide coverage for ABA Therapy or Treatments regardless of the providers network status. These services are reimbursable through SCCAP but are subject to the \$50,000 maximum benefit.

The plan provisions that support this denial can be found in the **IBM Mental Health Care Program** section of the About Your Benefits (AYB) – Health Care book under Exclusions. It states:

- “The following are exclusions to services provided under the MMHC Program
- Services performed in connection with conditions not classified in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)*.
  - Outside of an initial assessment, services as treatments for a primary diagnosis of conditions and problems that may be a focus of clinical attention, but are specifically noted not to be mental disorders within the current edition of the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)*.
  - Outside of initial assessment, services as treatments for the primary diagnoses of learning disabilities, conduct and impulse control disorders, pyromania, kleptomania, gambling disorder, and paraphilic disorder.
  - Educational services that are focused on primarily building skills and capabilities in communication, social interaction and learning.
  - Out-of-network, non-urgent residential and day rehabilitation services received outside the IBMer's state of residence or immediate bordering state. This exclusion does not apply to urgent care, students attending school out of state or those with dual addresses.
  - Tuition or services that are school based for children and adolescents required to be provided by, or paid for by, the school under the Individuals with Disabilities Education Act.
  - Outside of initial assessment, unspecified disorders for which the provider is not obligated to provide clinical rationale as defined in the current edition of the *Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5)*.
  - Intensive Behavioral Therapy for Autism Spectrum Disorder, including Intensive Behavioral Therapy such as Applied Behavior Analysis (ABA). See the “IBM Special Care for Children Assistance Plan” section if your child is being treated for a developmental delay for consideration of these charges.

In accordance with this plan provision, I have determined that the claims were denied correctly. As a result, the only benefits payable for ABA therapy were those paid through SCCAP. We have confirmed you have utilized \$47,203.60. of the \$50,000 benefit Maximum for ABA, Occupational Therapy, and Speech Therapy.

In your appeal, it was indicated that an exception should be made as you feel IBM is violating federal law by excluding coverage for ABA under the IBM Mental Health Care Program and by limiting the SCCAP benefit to a \$50,000 lifetime benefit maximum. Please note, the IBM plan exclusion for ABA therapy does not violate federal law and the \$50,000 benefit maximum for SCCAP was determined to be reasonable.

Regrettably, exceptions to the plan cannot be made. As the Plan Administrator, it is my responsibility to ensure claims are paid in accordance to the plan provisions and consistently for all plan participants.

Please note this is the final step in IBM's internal appeal process.

**Plan Administrator's View of Eligibility for External Review:** As explained below, you may request an external review of your claim if (a) the denial of claims involves medical judgment or (b) you are challenging a rescission of coverage. A denial of a claim is based on medical judgment if, for example, it is based on the Plan's requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness of a covered benefit. A claim involves a rescission of coverage if the claim challenges a retroactive cancellation of coverage for reasons other than failure to timely pay contributions towards the cost of coverage.

You may have the right to have an independent review organization determine whether the denial of this claim involves medical judgment or whether this claim involves a rescission of coverage. However, it is my view that: (1) The denial of this claim is not based on medical judgment because my determination is based on an interpretation of the Plan; and (2) this claim does not involve a rescission of coverage. Specifically, the denial of your appeal was not based on medical judgment but on the plan provision which excludes all ABA Therapy.

**Right to External Review:** You may have the right to appeal this decision through IBM's voluntary external review process. The external review process provides an independent review of your appeal by an external independent review organization (IRO). IROs are separate companies that are not controlled by IBM. IBM's external review process is managed by IPRO. Accordingly, to file a request for external review, you or your authorized representative should send a letter to IPRO (at the address shown below) with (1) name, telephone number and ID Number, (2) the claim number, (3) the date of service, (4) a description of the claim and (5) a copy of this letter. The ID Number, claim number and date of service are included in the Claim Details at the beginning of this letter.

IPRO  
Corporate Programs  
1979 Marcus Ave.  
Lake Success, NY 11042-1002  
Attention: IBM External Review Process

To be eligible for external review, (1) you must have exhausted the internal appeal process, (2) the denial of this claim must involve medical judgment or must challenge a rescission of coverage, and (3) the request must be filed with IPRO within four months after the date of this letter. If there is no corresponding date four months after the date of this letter, then the request must be filed by the first day of the fifth month following receipt of the notice. If the last filing day would fall on a Saturday, Sunday, or Federal holiday, the last filing day is extended to the next day that is not a Saturday, Sunday, or Federal holiday. There is no charge for this review.

Upon receipt of the request, IPRO will determine if the request (1) has been timely filed for external review, (2) will then determine whether the request is eligible for external review because it involves a denial based on medical judgment or a challenge to a rescission of coverage and IPRO will notify you of its decision. If the request has been timely filed and is eligible for an external review, IPRO will assign the request to one of three "independent review organizations" (IROs). The assigned IRO will then contact you and provide instructions on how you may supply additional information to be considered. If the IRO decides to overturn my decision, the Plan will provide coverage or payment for the health care services.

If you believe that this claim is urgent, which generally means that K█'s health may be in serious jeopardy or, in the opinion of his physician, he may experience pain that cannot be adequately controlled while you wait for a decision on the external review of the claim, you may request an expedited external review by contacting IPRO by phone (516-326-7767 ext. 223) or by facsimile (516-304-3761). You should provide (or will be asked to provide) all of the information required above for a standard external review and any other information you would like to have considered in connection with the expedited external review. IPRO will determine whether the claim is eligible for expedited external review.

**Assistance with Your Questions:** A more complete description of the internal and external processes for reviewing this claim is available in the Summary Plan Description. If you would like a copy of the Summary Plan Description or any other information relevant to this claim, she may contact the IBM Benefits Center at 1-866-937-0720. For questions about his rights, this notice, or for assistance, she can contact the Benefits Center at 1-866-937-0720 or the Employee Benefits Security Administrator (of the U.S. Department of Labor) at 1-866-444-EBSA (3272) or [www.askebsa.dol.gov](http://www.askebsa.dol.gov).

In addition, a consumer assistance program may be maintained in your state to assist you in filing a request for external review. To determine whether a consumer assistance program is available in your state, please see the enclosed list of consumer assistance programs which is also available at <http://www.dol.gov/ebsa/healthreform/>.

**Other Dispute Resolution Options:** Please also be aware that because your health plan is subject to the Employee Retirement Income Security Act of 1974 (ERISA), you may have the right to bring a civil action under section 502(a) of ERISA to challenge this decision. You may also have other voluntary alternative dispute resolution options, such as mediation.

Sincerely,



E. Fleming  
IBM Plan Administrator

Enclosure

cc: Ms. Kayla Dougherty

**ENGLISH:** If you need assistance to understand this document in an alternate language, you may request it at no additional cost by calling the IBM Employee Services Center.

**SPANISH (Español):** Para obtener asistencia en Español, llame al 866-937-0720.

**TAGALOG (Tagalog):** Kung kailangan ninyo tulong sa Tagalog tumawag sa 866-937-0720.

**CHINESE (中文):** 如果需要中文的帮助, 请拨打这个号码 [88-796-9876].

**NAVAJO (Dine):** Dinek'ehgo shika at 'ohwol ninisingo, kwijjigo holne' 866-937-0720